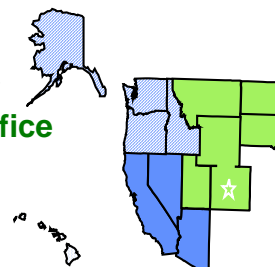




## U.S. Army Environmental Center Western Regional Environmental Office **REGIONAL UPDATE**



**JUNE 1999**

**REGION X EDITION**

This publication provides current information on significant regulatory developments and related information in the Federal Region X area (Alaska, Idaho, Oregon, and Washington) that affect U.S. Army activities and operations. We appreciate your feedback and encourage suggestions for future discussion, or comments. Please contact us at U.S. Army Environmental Center, Western Regional Environmental Office, ATTN: SFIM-AEC-WR, Building 111, Commerce City, CO 80022-2108, commercial (303) 289-0125, DSN: 749-2125, FAX: (303) 289-0272, or e-mail: [redgerto@pmrma-emh1.army.mil](mailto:redgerto@pmrma-emh1.army.mil).

### **REGIONAL UPDATES/ALERTS AVAILABLE ON THE INTERNET**

Current and past issues of the *Regional Update* & *Regional Alerts* for Regions VIII, IX, and X are available on the Internet at <http://aec.army.mil:8080/prod/usaec/ro/western/updates/wupdates.htm>.

### **FEDERAL REGULATORY DEVELOPMENTS**

#### **Air Quality:**

#### **EPA Ozone and PM2.5 Rules Struck Down**

In a surprising victory for industry, on 14 May 1999, the United States Court of Appeals for the District of Columbia Circuit struck down the U.S. Environmental Protection Agency's (EPA) NAAQS for ozone and PM2.5. The court based its decision on the non-delegation doctrine, a legal principle that prohibits Congress from delegating to executive agencies (such as the EPA) Congress' legislative powers. According to the D.C. Circuit, the EPA acted as a legislative body rather than as an entity that merely implements legislation when it established the ozone and PM2.5 standards without an "intelligible principle" to channel its application of the factors it considered. The decision runs counter to many previously decided cases that grant the EPA considerable discretion to exercise policy judgment in setting standards when there is uncertainty about the health effects of pollutants. The court distinguished those earlier cases by pointing out that in those cases the non-delegation argument had not been presented. Expect this case to go to the Supreme Court. For more information, contact Ms. Diane Connolly at (303) 289-0459 (commercial) or 749-2459 (DSN).

#### **Water Quality:**

#### **Proposed Revisions to the National Primary Drinking Water Regulations**

Public water systems must notify their customers when they violate the U.S. Environmental Protection Agency (EPA) or state drinking water standards or provide drinking water that may pose a risk to consumers' health. Under 1996 revisions to the Safe Drinking Water Act, the EPA is proposing revisions to the existing public notification rule to more specifically tailor the form, manner and timing of the notices for health risks. The proposal will require water systems to provide notice within 24 hours for violations posing an acute risk to health from short-term exposure. The current regulation requires such notices within 72 hours. The proposal also will allow water systems to group minor violations into a single annual report, rather than meet the existing requirement to provide separate notices within three months. The proposed rule is closely aligned with the related Consumer Confidence Report regulation, which requires community water systems to issue an annual report on drinking water quality. The proposal was published in the Federal Register on 13 May 1999. The EPA is requesting public comment through 13 July 1999.

and has scheduled public meetings. A fact sheet, copy of the proposal, and a draft public notification handbook are available on the Internet at <http://www.epa.gov/safewater/>. Contact the Safe Drinking Water Hotline at (800) 426-4791 for more information.

### **EPA Draft Public Notification Handbook Available for System Owners**

Drinking water system owners and operators are provided step-by-step instructions on notifying the public of violations of federal standards in a draft Public Notification Handbook announced on 13 May 1999 by the EPA (64 FR 25880). By explaining new public notification requirements in simple, clear language and providing specific examples of notices, the EPA hopes the handbook will lead to an improved public notification process. The handbook can help systems determine what tier a violation falls into and what agency (such as a state regulator) to notify in the case of violations, the EPA states. It also summarizes the public notification requirements, describes delivery requirements for notices, and describes how to develop a notice. The EPA also issued a notice seeking comments on the draft. Comments on the draft handbook are due by 31 July 1999. Additional information concerning the draft handbook is available from the Safe Drinking Water Hotline at (800) 426-4791. Copies of the draft handbook are available electronically at <http://www.epa.gov/safewater/>.

### **EPA Outlines Water Program Vision**

The EPA's Assistant Administrator, J. Charles Fox, recently issued his vision for the EPA's national water program. Fox outlined recent accomplishments of the national water program and described focus areas for the national water program for the next few years. For the clean water program, areas include watershed restoration action strategies, Total Maximum Daily Loads (TMDLS), permit backlog, water quality standards program modernization, nonpoint source program upgrades, and water resource protection on Native American lands. For the safe drinking water program, areas include State capacity development, source water assessments, the unregulated contaminant rule, the class V underground injection control rule, and the public notification rule. Fox also outlined three areas of focus for building for the future: improving information about the conditions of waters; building a consensus for increased funding of water programs; and strengthening programs to protect coastal and estuarine waters. For a copy of the water program vision via the Internet, visit <http://www.epa.gov/OW/foxvis.html>.

### **Miscellaneous:**

#### **Final Policy on Institutional Controls at Federal Facilities**

The EPA, Region X, announces that it has established a final policy on measures to be taken to ensure the short- and long-term effectiveness of institutional controls (IC) instituted to protect human health and the environment at federal facilities. IC's are defined as remedial actions being implemented pursuant to the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA) and/or corrective actions pursuant to the Resource Conservation and Recovery Act (RCRA). The purposes of the final policy are to: clarify Region X's expectations and criteria for concurring on proposed remedial actions, approve corrective actions, and enhance existing cleanup decisions which include IC as a component; and, to establish guidelines for the effective and efficient oversight of ICs at federal facilities. For the purposes of CERCLA Section 120(b), the EPA intends to apply this policy to cleanups that rely on ICs until the federal property is transferred to private ownership; if the property is transferred to another federal entity, the EPA will continue to apply this policy. Any transfer of property to private ownership is subject to separate guidance concerning the suitability to transfer. The EPA Region X states that the final policy was developed based on the Agency's experience working with active DoD facilities. For additional information or to obtain a copy of the final policy, contact Mr. Mike Flannery, Regional Environmental Coordinator for Region X at (303) 289-0353 (com) or 749-2353 (DSN).

**EPA Requests Public Comment on Enforcement Audit Policy**

The EPA announces the preliminary results on the evaluation of its "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) and is soliciting public comment on proposed revisions to the Audit Policy. The changes are based on data from extensive outreach including surveys of policy users. Some of the major preliminary results include: widespread use of the policy including 455 entities disclosing violations at approximately 1850 facilities; a user satisfaction rate at approximately 80% stating that they would use the policy again and recommend it to others; and a reduction of pollutants, and a reduced likelihood of spills and other accidents due to the voluntary discovery and correction of violations. The EPA is also proposing specific improvements to the policy. One significant proposed revision is to extend the prompt disclosure period from 10 to 21 days. A complete list of the preliminary results and proposed revisions will appear in the Federal Register soon. Interested parties should send comments in writing within 60 days of its publication notice. The EPA published the policy in the Federal Register on 22 December 1995 (60 FR 66705). Contact the EPA's Office of Enforcement and Compliance Assurance at (202) 564-2530 for a copy of the policy.

**CONFERENCES AND MEETINGS**

- **24-26 August 1999: 8<sup>th</sup> Annual ITAM Workshop - Camp Riley, MN.** This year's workshop, entitled "Bridging the Gap - Working Together to Enhance Military Readiness into the 21<sup>st</sup> Century," is a forum for the scientific exchange of technologies, ideas, experiences, and lessons learned that relate to the application of Integrated Training Area Management (ITAM) on military training and testing lands. Refer to the ITAM homepage at <http://www.army-itam.com/> or call 927-5166 (DSN) or (757) 878-5166 (commercial) for registration materials and meeting information.

**ALASKA*****Legislative Developments***

The 21<sup>st</sup> Alaska State Legislature was scheduled to adjourn on 19 May 1999, but the session has been extended. There still is no agreement on a long-term fiscal plan, and Governor Knowles says the Legislature is not leaving until it has one in place. Also, the Governor wants Alaskans to have the chance to vote on any use of permanent fund earnings.

***Regulatory Developments***

No significant regulatory developments were noted for the State of Alaska during the reporting period.

**IDAHO*****Regulatory Developments***

No significant regulatory developments were noted for the State of Idaho during the reporting period.

**OREGON*****Legislative Developments***

The 70<sup>th</sup> Legislature Assembly of the State of Oregon is scheduled to adjourn in June 1999.

**House Bill 2176: Oregon Drinking Water Quality Act**

**Summary:** Conforms the Oregon Drinking Water Quality Act to changes in federal Safe Drinking Water Act. Increases civil penalty authorized for large water systems from \$500 to \$1,000 for each day of violation. Amends definition of water system. Eliminates exemption from operator certification for small water systems and systems supervised by registered engineer.

**Status:** Introduced before the House on 21 January and referred to the Committee on Water and Environment. Passed out of Committee with amendments on 7 May 1999.

**Outlook:** Too early to predict prospects for passage.

**House Bill 2180: Environmental Proceedings**

**Summary:** Specifies standing requirements for an association or organization seeking judicial review of certain final orders of Oregon Department of Environmental Quality (ODEQ) or Environmental Quality Commission.

**Status:** Introduced before the House on 21 January and referred to the Committee on Judiciary on 26 January. A public hearing on the bill was held on 7 April. Passed the House on 15 April and transmitted to the Senate on 16 April. Referred to the Senate Committee on Judiciary where a public meeting will be held on 13 May 1999.

**Outlook:** Too early to predict prospects for passage.

**House Joint Memorial 1: Request for Federal Funding**

**Summary:** Requests that the President and Congress withhold funding for enforcement actions taken by the National Marine Fisheries Service in Oregon until Congress provides sufficient funds to assist the state in restoration of salmon.

**Status:** Introduced before the House on 13 January and referred to the Committee on Stream Restoration and Species Recovery. Adopted by the House and transmitted to the Senate on 20 April. Referred to the Senate Committee on Stream Restoration and Species Recovery on 21 April 1999.

**Outlook:** The Legislature's feelings are still hurt over the federal action concerning salmon protection. Look for the memorial to pass unanimously in both the House and Senate.

**Senate Bill 133: Salmon and Stream Enhancement**

**Summary:** Expands scope of responsibility of Joint Legislative Committee on Salmon and Stream Enhancement to include oversight of activities pertaining to all native or anadromous fish.

**Status:** Introduced before the Senate on 11 January and referred to the Committee on Stream Restoration and Species Recovery. Public meeting held on 18 March. Passed out of Committee with amendments on 5 May. Passed the Senate and transmitted to the House on 7 May 1999.

**Outlook:** Too early to predict prospects for passage.

### ***Regulatory Developments***

No significant regulatory developments were noted for the State of Oregon during the reporting period.

<b>WASHINGTON</b>
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### ***Legislative Developments***

The 56<sup>th</sup> Washington State Legislature adjourned on 25 April 1999. Legislation which failed to pass will carry over to the 57<sup>th</sup> session in 2000. Governor Locke called the Legislature back into special session for three days, ending on 20 May 1999. He has stated that an additional, one-day special session may be called before 30 June 1999 to address budgetary items.

**House Bill 1204: Voluntary Remediation**

**Summary:** Declares that the coordination of environmental restoration priorities and mitigation responsibilities is intended to improve the ecological benefits gained from state expenditures, provide

greater emphasis on shared natural resource management, increase leveraging opportunities for cost-share projects, and increase mitigation credit opportunities.

**Status:** Introduced, and referred to the House Committee on Agriculture and Ecology on 19 January. Passed out of Committee as a substitute bill and referred to the Committee on Rules on 8 March. Transmitted to the Senate and referred to the Committee on Transportation on 18 March. Passed out of Transportation and into the Committee on Rules on 5 April. Passed the House on 20 April and the Senate on 21 April. Transmitted to the Governor and signed into law on 10 May 1999.

**Outlook:** HB 1204 is effective as of 25 July 1999.

#### **House Bill 1559: Hazardous Waste**

**Summary:** Amended version repeals an obsolete statute dealing with the transportation of explosives and uses the Code of Federal Regulations governing the transportation of hazardous materials instead.

**Status:** Introduced and referred to House Local Government Committee on 28 January. Amended in Committee on 11 February and referred to House Rules Committee on 16 February 1999. Passed the House and transmitted to the Senate on 8 March. Passed the Senate on the third reading on 8 April. Signed by the Speaker of the House on 13 April and the Senate President on 20 April. Transmitted to the Governor and signed into law on 7 May 1999.

**Outlook:** HB 1559 is effective as of 25 July 1999. The purpose of this bill is to repeal an obsolete and conflicting State statute.

#### **Senate Bill 5012: Cleanup Liability of USTs**

**Summary:** Clarifies expenditure allotment procedures for payment of administrative and operating costs of the Pollution Liability Insurance Agency regarding the Pollution Liability Insurance and Underground Storage Tank Community Assistance Programs. Sunsets the Pollution Liability Insurance Program Trust Account 1 June 2001.

**Status:** Introduced before the Senate on 11 January and referred to the Senate Commerce, Trade, Housing, and Financial Institutions Committees. Passed out of Committee on 29 January and referred to the Committee on Rules on 1 February. Passed the Senate on 12 March and transmitted to the House. Assigned to the House Committees on Financial Institutions and Insurance on 16 March. Passed the House on 8 April. Signed by the Speaker of the House on 9 April and the Senate President on 13 April. Transmitted to Governor Locke for his consideration on 16 April. The Governor signed the bill into law on 22 April 1999.

**Outlook:** SB 5012 is effective as of 25 July 1999.

#### **Senate Bill 5103: Water and Endangered Species**

**Summary:** Declares an intent to direct: (1) a review of the state's existing coastal zone program and the submission of additional state and local government policies to the National Oceanic and Atmospheric Administration for inclusion in the program; and (2) that maximum state efforts be directed toward implementing the state's role in federal consistency determinations to ensure that state and local policies influence federal agency actions affecting the state's coastal zone.

**Status:** Introduced and referred to the Senate Environmental Quality and Water Resources Committee on 13 January. Passed the Senate and transmitted to the House Committee on Rules on 2 April. Returned to the Senate Committee on Rules by resolution on 25 April 1999.

**Outlook:** It appears that SB 5103 is dead for the session.

### ***Regulatory Developments***

#### **Air Quality:**

- **Proposed Rule: Regional Haze.** The Washington Department of Ecology (WDOE) is proposing revisions to its State Implementation Plan (SIP) for visibility protection. The visibility SIP provides for continuing consultation between the State and federal land managers on implementing the visibility protection program, provides for a monitoring strategy for Class I areas and the use of available visibility data, and contains a long-term strategy to make reasonable progress toward national visibility goals. The revision is based on a review of the SIP by the WDOE, which was conducted in 1997.

The review determined that the SIP is adequately dealing with visibility impairment under current rules but needs to be revised administratively to reflect rule changes that have occurred. This SIP revision will not address the new federal regional haze rule. A hearing on the proposed rule will be held on 10 June 1999. Contact the WDOE at (360) 407-6820 for additional information.

#### **Solid/Hazardous Waste:**

- **Proposed Rule: Military Munitions Rule.** The WDOE is developing a rulemaking proposal to update its Dangerous Waste Regulations (WAC 173-303). Several federal rules will be incorporated into the Dangerous Waste Regulations either in their entirety or in part. These include the military Munitions Rule, used oil rules, the expanded public participation rule, Subpart CC air emission Standards, and land disposal restriction rules. There will also be some changes to state-only rules. These will include technical corrections and improvements to transportation requirements. A public comment period will be opened this summer. The WDOE states that it will attempt to adopt the rules in April 2000.

The WDOE has voiced several concerns with the Munitions Rule. First, they view it as less stringent than the previous federal rules. Secondly, they do not favor reliance on the DDESB standards in lieu of standard RCRA rules (they oppose the Conditional Exemptions for storage and transportation). Finally, they have stated that a more structured definition of "emergency" than is in either the Munitions Rule or their own RCRA program is needed. The WREO anticipates that the rule that is ultimately adopted in Washington will be a hybrid of the Munitions Rule and the Washington State RCRA program. Contact the WREO at (303) 289-0353 (com) or 749-2353 (DSN) for additional information.

#### **Miscellaneous:**

- **Notice: Performance Partnership Agreement.** The WDOE is proposing a draft Performance Partnership Agreement with the EPA for the period 1 July 1999 to 30 June 2001. The agreement identifies the joint goals and priorities for the two agencies for the next biennium, as well as the activities that will be carried out and the measures that will be used to track the agencies' progress. Contact the WDOE at (360) 407-6998 for a copy of the draft agreement or to provide comments.